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SUPREME COURT, U.S.

No. 80 - 2049

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1980

GEORGE A. RALSTON, WARDEN,

Petitioner,

v.

JOHN CARROLL ROBINSON,

Respondent.

NOTICE OF
MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

To: The Solicitor General
United States Department of Justice
Washington, DC 20530

PLEASE TAKE NOTICE that on June 9, 1981, I caused to be delivered to the Supreme Court of the United States for filing respondent's Conditional Expedited Memorandum in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit and Motion for Leave to Proceed in Forma Pauperis.

Elizabeth M. Landes
Attorney for Respondent

Jerold S. Solovy
Robert L. Graham
Elizabeth M. Landes
JENNER & BLOCK
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Chicago, Illinois 60611
312/222-9350

Date: June 9,1981.

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MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Pursuant to Rule 46.1 of the Rules of this Court, motion is hereby made that the respondent be allowed to proceed in forma pauperis before this Court.

Respondent was represented in the Court below by counsel appointed pursuant to the provisions of the Criminal Justice Act of 1964, as amended, 18 U.S.C. §3006A.

Respectfully submitted,

Jerold S. Solovy /by EML
Jerold S. Solovy
JENNER & BLOCK
Attorney for John Carroll Robinson

Of Counsel:
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CERTIFICATE OF SERVICE

I hereby certify that on this ninth day of June, 1981, a copy of respondent's Conditional Expedited Memorandum in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit and an accompanying Motion for Leave to Proceed in Forma Pauperis was mailed from One IBM Plaza, Chicago, Illinois 60611, to The Solicitor General, United States Department of Justice, Washington, D.C. 20530. I further certify that all parties required to be served have been served.

Subscribed and sworn to
before me this ninth
day of June, 1981.

Notary Public for the State
of Illinois, County of DuPage

My commission expires September 16, 1982

Elizabeth M. Landes
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
312/222-9350

One of the Attorneys for
Respondent John Carroll Robinson

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v.

JOHN CARROLL ROBINSON,

Respondent.

CONDITIONAL EXPEDITED MEMORANDUM IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Date: June 9, 1981

TABLE OF CONTENTS

	Page
Table of Authorities	ii
Opinion Below	2
Additional Statutes Involved	2
Additional Statement of the Case	2
Reasons for Denying the Writ	7
I. The Decision of the Seventh Circuit Is Correct and Does Not Raise Questions Worthy of the Attention of This Court. . .	7
II. This Case Does Not Present An Issue Ripe for Review By This Court.	11
Conclusion	14

TABLE OF AUTHORITIES

Cases

	Page
Dorszynski v. United States, 418 U.S. 424 (1974) . . .	6,8,9
Durst v. United States, 434 U.S. 542 (1978)	9
Outing v. Bell, 632 F.2d 1144 (4th Cir. 1980), cert. denied, 101 S. Ct. 1710 (1981)	12,13
Reiter v. Sonotone Corp., 442 U.S. 330 (1979)	8
Thompson v. Carlson, 624 F.2d 415 (3d Cir. 1980) . .	9,10,12,13
United States ex rel. Dancy v. Arnold, 572 F.2d 107 (3d Cir. 1978)	10
Watt v. Alaska, 101 S. Ct. 1673 (1981)	13

Constitutional Provisions and Statutes

Youth Corrections Act (YCA), 18 U.S. C. § 5005 et seq.:	
18 U.S.C. § 5005 et seq.	7
18 U.S.C. § 5010 (c)	3,8
18 U.S.C. § 5011	4,5,9,10
18 U.S.C. § 5023(a)	8
18 U.S.C. § 4205(b)(2)	3
18 U.S.C. § 4208 (b)	3

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IN THE
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Petitioner,

v.

JOHN CARROLL ROBINSON,

Respondent.

CONDITIONAL EXPEDITED MEMORANDUM
IN OPPOSITION TO PETITION
FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Respondent respectfully prays that the petition for a writ of certiorari be denied.

In view of the motion for expedited consideration filed by petitioner, respondent has prepared this memorandum for filing only six days after receipt of the petition. Should petitioner's motion be denied, respondent requests leave to prepare and submit a more complete response to the petition.

Opinion Below

The opinion of the Court of Appeals is reported at 642 F.2d 1077 (7th Cir. 1981).

Additional Statutes Involved

18 U.S.C. 5006(g) provides:

> "Treatment" means corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders.

18 U.S.C. 5017(d) provides:

> A youth offender committed under section 5010(c) of this chapter shall be released conditionally under supervision not later than two years before the expiration of the term imposed by the court. He may be discharged unconditionally at the expiration of not less than one year from the date of his conditional release. He shall be discharged unconditionally on or before the expiration of the maximum sentence imposed, computed uninterruptedly from the date of conviction.

18 U.S.C. 5023(a) provides:

> Nothing in this chapter shall limit or affect the power of any court to suspend the imposition or execution of any sentence and place a youth offender on probation or be construed in any wise to amend, repeal, or affect the provisions of chapter 231 of this title or the Act of June 25, 1910 (ch. 433, 36 Stat. 864), as amended (ch. 1, title 24, of the D. of C. Code), both relative to probation.

Additional Statement Of The Case

Respondent's Youth Corrections Act Sentence

In 1974 respondent John Carroll Robinson, then seventeen years old, was sentenced in the Superior Court of the District of Columbia to a ten-year term for second-degree

murder. 642 F.2d 1077, 1077-78 (7th Cir. 1981), Pet. App. A, 2a.*/ The trial judge sentenced Robinson under the provisions of the Youth Corrections Act ("YCA"), 18 U.S.C. § 5010(c), with the recommendation that "his release be dependent upon the attainment of at least an eighth grade level of education and the successful completion of a trade of his own choosing." The judge also recommended that, "the defendant shall participate in intensive, individual therapy on a weekly basis . . . ." 642 F.2d at 1078, Pet. App. A, 2a.

Respondent's Consecutive Adult Sentences

During his initial placement at the Federal Correctional Institution in Ashland, Kentucky, Robinson was found guilty of assaulting a federal officer. After finding that Robinson would not benefit from another YCA sentence, the trial judge in that proceeding sentenced him as an adult to a ten-year sentence pursuant to 18 U.S.C. § 4208(b). In response to a report and recommendation from the Bureau of Prisons based on their study and observation of Robinson, the judge reduced the sentence to sixty-six months. This sentence was to run consecutively to Robinson's previously imposed Youth Corrections Act sentence. 462 F.2d at 1078, Pet. App. A, 2a-3a.

After several subsequent transfers, in August 1977, Robinson pled guilty to assaulting a federal officer while serving his Youth Corrections Act sentence at the Federal Correctional Institution in Lompoc, California. 462 F.2d at 1078, Pet. App. A, 3a. Robinson was sentenced in the United States District Court for the Central District of California as an adult pursuant to 18 U.S.C. § 4205(b)(2),

---

*/ References to petitioner's appendices are denoted "Pet. App. ___, ___."

to serve a maximum term of one year and one day, which sentence was to run consecutively to his YCA sentence and adult sentence. 642 F.2d at 1078, Pet. App. A, 31. Although, at the time of sentencing, Robinson was twenty years old, the judge made no explicit finding in his sentencing order that Robinson would receive "no benefit" from a sentence under the Youth Corrections Act. Id.

Events after The Imposition Of The Consecutive Adult Sentences

After imposition of his second adult sentence, Robinson was placed in the United States Penitentiary at Terre Haute, Indiana on September 9, 1977, while he was still serving his initial YCA sentence. 642 F.2d at 1078, Pet. App. A, 3a-4a. At Terre Haute, Robinson was treated as a regular adult offender. Id. He was neither segregated from non-YCA adult offenders nor was he provided any treatment as mandated by Section 5011 of the Youth Corrections Act. Id.

After exhausting his administrative remedies, Robinson sought relief by filing a petition for a writ of habeas corpus on May 25, 1978 in the United States District Court for the Southern District of Indiana. This case was subsequently transferred to the United States District Court for the Southern District of Illinois when Robinson was transferred to the United States Penitentiary at Marion, Illinois, on September 27, 1978. 642 F.2d at 1078, Pet. App. A, 4a.

The District Court's Decision

Chief Judge Foreman of the United States District Court for the Southern District of Illinois granted Robinson a writ of habeas corpus, adopting the exhaustive Report and Recommendation of the United States Magistrate. Pet. App.

C, 18a-29a. The magistrate had found that denying Robinson both YCA-mandated treatment and segregation from non-YCA adult offenders "neither fulfills the letter nor the spirit of the law." Pet. App. D, 27a. Agreeing, Chief Judge Foreman repeatedly emphasized the clarity of the dictates of the statute:

> Congress has set forth in very specific terms the statutory scheme under the YCA. The statute leaves little doubt as to exactly what Congress' intention was under the YCA. The statute speaks in directive and not discretionary terms. The Court has fully reviewed the very cogent arguments raised by the United States Government and its objections to The Report and Recommendation of the Magistrate, but feels that any changes in the interpretation of the YCA must come from Congress, and is not a role of the federal courts. Pet. App. C, 19a.

On January 7, 1980, the District Court ordered the government to transfer Robinson from the penitentiary at Marion "to an institution at which he will be segregated from adult offenders and will receive treatment as prescribed by 18 U.S.C. § 5011 . . . ." Pet. App. C, 20a.

On January 22, 1980, the district court granted the government's motion to stay the order pending appeal. The government appealed the District Court's January 7, 1980 order granting Robinson a writ of habeas corpus, and Robinson appealed, pro se, the January 22, 1980 stay of the order. 642 F.2d at 1079, Pet. App. A, 4a-5a.

On June 17, 1980, Robinson was transferred from Marion, Illinois, to the Federal Correctional Institution at Memphis, Tennessee. The Federal Correctional Institution at Memphis does have a YCA unit, but Robinson was housed with the general adult prison population and did not receive any YCA-mandated treatment. 642 F.2d at 1079, Pet. App. A, 5a.

The Decision of the Seventh Circuit

On appeal to the United States Court of Appeals for the Seventh Circuit, the decision of the district court was unanimously affirmed. The court held that "under the provisions of the YCA, [Robinson] must be treated pursuant to YCA until the termination of his YCA-imposed sentence despite his subsequent sentencing as an adult." 642 F.2d at 1077, Pet. App. A, 2a. The court based its decision on the language of the statute, the legislative history and the decision of this court in Dorszynski v. United States, 418 U.S. 424 (1974), without reaching the constitutional issues raised by Robinson. 642 F.2d at 1079-808 & n.4, Pet. App. A., 5a-7a § n.4. The court concluded first that the YCA does not permit a judge, in proceedings involving a YCA prisoner, explicitly or by implication to reevaluate and modify the YCA sentence imposed in previous, unrelated proceedings by the original sentencing judge. 642 F.2d at 1079, Pet. App. A, 6a-7a. The court similarly rejected the assertion that the Bureau of Prisons has discretion to determine that a prisoner serving a YCA sentence, but facing a consecutive adult sentence at the expiration of his YCA term, should be confined as an adult. 642 F.2d at 1082, Pet. App. A, 13a-14a.

Judge Pell filed a separate concurring opinion emphasizing that Congress clearly has mandated the result reached by the Seventh Circuit in this case. 642 F.2d at 1083, Pet. App. A, 15a.

While his appeal was pending in the Seventh Circuit, Robinson was transferred for psychiatric evaluation to a hospital facility in Butner, North Carolina, where he is presently being held. Id. He is still serving his YCA sentence, which has a mandatory conditional release date of January 9, 1982.

Reasons for Denying the Writ

I.

The Decision of The Seventh Circuit Is Correct and Does Not Raise Questions Worthy of the Attention of This Court.

The unanimous decision below by the United States Court of Appeals for the Seventh Circuit, endorsed by every judge of that Court, 642 F.2d at 1079 n.5, Pet. App. A, 6a n.5, represents nothing more than the judicial application of the clear and explicit congressional mandate expressed in the Federal Youth Corrections Act (YCA), 18 U.S.C. § 5005 et seq. The decision below is entirely consistent with the applicable legislative history of the YCA and with the opinions of this Court. Furthermore, that decision preserves the traditional authority and role of the sentencing judge in the criminal justice system, thereby fostering the certainty and precision in the administration of justice intended by Congress. For these reasons, this case presents no issue worthy of review by this Court.

In holding in this case that "petitioner must receive segregation and treatment according to the provisions of the [Youth Corrections Act] for the duration of his YCA sentence," the Seventh Circuit merely applied the clear language of the Youth Corrections Act. 642 F.2d at 1083, Pet. App. A, 14a. Affirming the decision of the district court and the recommendation of the magistrate, the appellate court panel was unanimous in its conclusion that the statute grants no discretion either to a judge sentencing the YCA prisoner to a consecutive adult term for a subsequent offense or to the Bureau of Prisons to change the statutorily mandated conditions of his YCA sentence. The conclusion of the Seventh Circuit panel was endorsed by every judge of that court. 642 F.2d at 1079 n.5, Pet. App. A, 6a n.5.

As this Court recently has reemphasized, "in every case involving the construction of a statute, our starting point must be the language employed by Congress." Reiter v. Sonotone Corp., 442 U.S. 330, 337 (1979). In accordance with that approach, the court below noted initially that "the parties agree that the YCA contains no provision authorizing a YCA sentence to be reevaluated by another judge." 642 F.2d at 1079, Pet. App. A, 6a. The propriety of the court's refusal, in effect, to amend the statute to include such a provision cannot be questioned. As the court recognized: "[W]e hold that the statute mandates the result we reach." 642 F.2d at 1079 n.4, Pet. App. A, 51 n.4.

The YCA expressly grants to the sentencing judge considerable discretion in fashioning the appropriate sentence for a youthful offender. See 18 U.S.C. §§ 5010, 5023(a). As the decision below sets forth in detail, the legislative history of the YCA and the holding of this Court in Dorszynski v. United States, 418 U.S. 424 (1974), both recognize the broad discretion vested in the sentencing judge under the YCA. 642 F.2d at 1079-82, Pet. App. A, 7a-12a. This grant of discretion is completely in accord with the traditionally "unfettered sentencing discretion of federal district judges." Dorszynski v. United States, 418 U.S. at 437. The purposes of granting this broad discretion to the sentencing judge obviously would be defeated if a second judge, imposing a consecutive sentence on a YCA prisoner in entirely separate proceedings, could casually or arbitrarily override the considered decision of the original judge as to the appropriate sentence to be imposed for the original offense. The Seventh Circuit properly declined to infer that Congress intended such "a departure from well-established doctrine without a clear [congressional] expression to disavow it."

642 F. 2d at 1080, Pet. App. A, 9a (quoting Dorszynski v. United States, 418 U.S. at 441).

By the same token, the Seventh Circuit correctly recognized that the YCA does not empower the Bureau of Prisons to modify the sentence imposed by the trial judge. Pet. App. A, 12a-14a. Although the statute accords the Bureau considerable flexibility in implementing the dictates of the YCA, see 18 U.S.C. § 5011, it is not within the Bureau's power to determine that a prisoner serving a YCA sentence should be treated as an adult prisoner. 642 F.2d at 1082-83; Pet. App. A, 13a-14a. Accord, Thompson v. Carlson, 624 F.2d 415, 428 (3d Cir. 1980). The statute reserves for the trial judge the exclusive authority to determine whether the offender should be treated as an adult prisoner or as a YCA offender during the pendency of the sentence imposed by that judge. 642 F.2d at 1080-83; Pet. App. A, 12a-14a. This Court expressly has recognized both the administrative flexibility built into the YCA and the broad discretion it grants only to the sentencing judge. Durst v. United States, 434 U.S. 542, 545-46, 551 (1978). The decision of the Seventh Circuit thus correctly applies the provisions of the YCA and reaches a result entirely consistent with the applicable legislative history and with the opinions of this Court.

Petitioner's contention that this result will interfere with the efficient administration of the federal rectional system lacks merit. According to petitioner's figures, as of December 31, 1980, only 175 YCA inmates also were under concurrent or consecutive adult sentences. Petition at 7 n.5. The figures do not reveal how many of these are subject to consecutive sentences and consequently might be affected by the Seventh Circuit's decision. In fact, in his motion for expedited consideration, petitioner

states that only ten prisoners in the Seventh Circuit are situated similarly to respondent and would be in a position to seek a similar remedy. Petitioner's Motion for Expedited Consideration of the Petition for a Writ of Certiorari at 6 (hereinafter cited as "Motion"). Thus, this case is not one of great importance to the continued functioning of the federal prision system.

The discretion granted to the Bureau of Prisons under the YCA specifically empowers it to devise flexible solutions to practical problems encountered in implementing the YCA. 18 U.S.C. § 5011. The Bureau must take whatever steps are necessary to ensure, in carrying out the dictates of Congress, that the smooth operation of the correctional system is not disrupted and that the particular conditions of confinement for each YCA prisoner are appropriate. That these tasks may present a challenge provides no justification for the Bureau of Prisons' refusal to adhere to the YCA program mandated by Congress. See 642 F.2d at 1082-83; Pet. App. A, 13a-14a; Thompson v. Carlson, 624 F.2d at 421; United States ex rel. Dancy v. Arnold, 572 F.2d 107 (3d Cir. 1978).

The conclusion reached by the Seventh Circuit, rather than disrupting the criminal justice system as petitioner contends, Petition at 7-9, actually ensures the continued orderly operation of that system as mandated by Congress. This decision first reaffirms the limited role of the judiciary in the enforcement of federal legislation. When Congress has expressed its intent, as is the case here, the courts should apply the law as written and refrain from amendment in the guise of statutory construction. Thus, the Seventh Circuit correctly declined to deviate from the clear dictates of the statute, despite petitioner's effort to

raise questions of policy properly addressed to Congress rather than to the courts. See Petition at 8-12. Judge Pell, who concurred separately in the decision of the Seventh Circuit panel and expressed some doubt about the benefit of continuing YCA treatment for respondent, nevertheless concluded unequivocally that "Congress, by the statute applicable in this case, has mandated the continuance" of the YCA sentence. 642 F.2d at 1083; Pet. App. A, 15a. Furthermore, the Seventh Circuit's decision preserves the authority traditionally accorded to the sentencing judge. To endorse a deviation from that tradition would undermine the certainty of sentencing and would introduce an element of confusion into the administration of justice.

II.

This Case Does Not Present An Issue Ripe For Review By This Court.

In petitioner's motion to expedite consideration, the Court is urged to grant certiorari immediately, and to accelerate the briefing, argument, consideration and decision of this case. Motion at 2-3, 6-7. Petitioner argues that expedited consideration is necessary in order to complete the process of judicial review before January 9, 1982, when the case, according to petitioner, becomes moot. Motion at 2-3.

Assuming, arguendo, that petitioner is correct in his insistence that respondent's conditional release from his YCA sentence will moot the issue resolved in the Seventh Circuit's decision, that circumstance does not require the Court to rush to judgment in this case. On the contrary, that circumstance militates strongly against the granting of the writ of certiorari.

This Court should not hasten to resolve the issues in this case, for to do so will impose an unnatural deadline for decision. Although petitioner argues that the Third Circuit and Fourth Circuit each has rendered a decision that diverges in some degree from that of the Seventh Circuit in this case, Petition at 7-8, this Court is not compelled by the claimed divergence of opinion to grant the petition in this case. This is not the first time that the Court has had the opportunity to resolve this conflict. This Court previously denied certiorari in the Fourth Circuit case addressing this issue, Outing v. Bell, 632 F.2d 1144 (4th Cir. 1980), cert. denied, 101 S. Ct. 1710 (1981) (decided Mar. 23, 1981), despite the fact that the decisions of the Third and Seventh Circuits already had been handed down. See Robinson v. Ralston, 642 F.2d 1077 (7th Cir. 1981) (decided Mar. 5, 1981); Thompson v. Carlson, 624 F.2d 415 (3d Cir. 1980) (decided May 22, 1980).

Furthermore, this will not be the last opportunity the Court will have to address the question raised in this case. As Robinson, Outing and Thompson illustrate, this issue, having arisen in the courts of appeals three times in the last two years, is likely soon to recur. Among the 175 YCA prisoners who have received additional adult sentences, Petition at 7 n.5, there are undoubtedly some who have received consecutive sentences and who are being treated as adult prisoners for the duration of their YCA terms. The lower federal courts should be permitted to address the challenges that these prisoners likely will mount to the practices of the Bureau of Prisons. By declining to review this decision now, the Court will permit the district courts

and the courts of appeals to address the issue raised here in a variety of contexts and will benefit from their analyses.*/

In his concurring opinion in Watt v. Alaska, 101 S. Ct. 1673, 1681-83 (1981), Justice Stevens recently emphasized the necessity for the Court to exercise restraint in granting petitions for writs of certiorari. Noting the great demands placed on the Court's necessarily limited resources, Justice Stevens observed in Watt, which presented a question of federal statutory construction, that "the public interest would have been better served by allowing this litigation to terminate in the Court of Appeals." 101 S. Ct. at 1682. Equally applicable to this case is Justice Stevens' remark that Congress is in a position to correct any errors it perceives in the courts' application of its legislation by clarifying its intent and that a simple denial of certorari by this Court may speed that process. Id. In view of the fact that this case does not raise an issue of sufficient importance to demand immediate action, this Court should reserve its attention for a more appropriate case.

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*/ Any divergence of views that may presently exist in the circuits that have addressed this issue may resolve itself if these courts are allowed to consider the question again, especially in the light of any additional decisions rendered by their colleagues. It should be noted that, whereas the decision of the Seventh Circuit in this case reflected the unanimity of the panel and the endorsement of the entire court, both Outing in the Fourth Circuit and Thompson in the Third Circuit issued from divided panels and elicited strong and well-considered dissenting opinions. See Outing v. Bell, 632 F.2d at 1146-49 (Hall, J., dissenting); Thompson v. Carlson, 624 F.2d at 423-28 (Adams, J., dissenting).

Should a significant division among the courts of appeals emerge at a later date, the Court then may choose to grant review in a case that does not present the time constraints imposed by this case.

Conclusion

For the reasons set forth above, respondent John Carroll Robinson respectfully requests this Court to deny the Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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Dated: June 9, 1981